

## REMARKS

Upon entry of this Response, claims 1-8, and 10-25, 37 and 38 remain pending in the application. Claims 1, 3, 6, 7, 10-13, and 23 have been amended, claims 37-38 has been added, and claims 9, 33, and 34 have been cancelled. No new matter has been added by these amendments. The cancelled claims have been cancelled without prejudice or waiver, and Applicants reserve the right to pursue the cancelled subject matter in a continuing application. Applicants respectfully request reconsideration and allowance of the pending claims in view of the following remarks.

### **I. Objection to claims 33-34**

In item 6 of the Office Action, claims 33-34 have been objected to for the grounds noted. Claims 33-34 have been canceled herein, thereby rendering the objection to these claims moot.

### **II. Claims 1-5, 7-8, 10-22, and 23-25 Recite Statutory Subject Matter**

Next, in item 9 of the Office action, claims 1-5, 7-22, 23-25, and 33-34 have been rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Claims 9, 33, and 34 have been canceled, thereby rendering this rejection moot with respect to such claims. As to the remaining claims, Applicants respectfully submit that the rejections are rendered moot by amendment. Accordingly, Applicants request that the rejection be withdrawn.

### **III. Claims 1-8 and 10-25 are allowable over *Singh* in view of *Mallon* and further in view of *Clemen***

Next, in item 11 of the Office action, claims 1-25 and 33-34 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Application Publication 2002/0169657 filed by Singh et al. (hereafter "*Singh*") in view of U.S. Patent Application Publication 2003/0004781 filed by Mallon et al. (hereafter "*Mallon*") and further in view of the article "Combining forecasts: A review and annotated bibliography" by Robert T. Clemen (hereafter "*Clemen*"). A prima facie case of obviousness is established only when the prior art teaches or suggests all of the

elements of the claims. MPEP §2143.03, In re Rijckaert, 9 F.3d 1531, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). In addition, "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 988, 78 U.S.P.Q.2d 1329, 1336 (Fed. Cir. 2006)). Applicants note that claims 9, 33, and 34 have been canceled herein, thereby rendering this rejection moot with respect to such claims. For the following reasons, Applicants request the rejection of claims 1-8 and 10-25 be withdrawn.

Claim 1, as amended, recites:

1. A method in at least one computing system for projecting future purchasing activity for a selected item, comprising:
  - compiling in the at least one computing system historical browsing data indicating, for each of a plurality of foregoing time periods, a level of item browsing activity performed with respect to the selected item;
  - generating** in the at least one computing system **from the compiled historical browsing data a projection of future browsing activity** performed at the merchant with respect to the selected item, **and using the generated projection of future browsing activity to generate a first projection of future purchasing activity levels** with respect to the selected item;
  - compiling in the at least one computing system historical purchasing data indicating, for each of a plurality of foregoing time periods, a level of item purchasing activity performed with respect to the selected item;
  - generating in the at least one computing system from the compiled historical purchasing data a second projection of future purchasing activity levels with respect to the selected item; and
  - blending in the at least one computing system the generated first and second projections of future purchasing activity levels with respect to the selected item to generate a third projection of future purchasing activity levels with respect to the selected item.

(*Emphasis added*). With respect to previously presented claim 9, whose limitations have been incorporated into the present claim 1, the Office Action alleges:

Claim 9: Singh **does not** explicitly disclose the limitations of this claim. Mallon discloses wherein the transforming comprises:

- using the retrieved data to generate a projection of future browsing activity performed at the merchant with respect

to the selected item (see ¶ 5, disclosing using past on-line behavior to predict future on-line action, including click-throughs of banner advertisements; ¶¶ 31-34, disclosing using past online activity to predict future economic activity).

...

Singh and Mallon do not explicitly disclose using the generated projection of future browsing activity to predict future purchasing activity at the merchant for the selected item. However Mallon does disclose predicting future click-through and purchasing behavior by analyzing past on-line behavior (see ¶ 5). Furthermore, it is old and well-known to use advertising data to forecast demand (see e.g. US 2004/0249698 to Kuono, generally; US 2003/0191653 to Brinbaum, ¶ 5). This, it would have been obvious to one of ordinary skill in the art at the time the invention was made to forecast purchase demand as taught by Singh using the projected browsing/advertising activity disclosed by Mallon. This combination of known elements produces a result that would be predictable to one of ordinary skill in the art.

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Applicants note that the Office Action **acknowledges** that the *Singh*, *Mallon*, and *Clemen* references fail to disclose using a generated projection of future browsing activity to predict future purchasing activity. The Office Action further alleges with respect to such an element of now amended claim 1 that it is “old and well-known to use advertising data to forecast demand,” citing generally *Kuono* (US 2004/0249698) and ¶ 5 of *Brinbaum* (US 2003/0191653). Applicants respectfully disagree. Applicants submit that such a proposition is too complex to be considered well known to a person of ordinary skill in the art. Additionally, Applicants have reviewed the *Kuono* and *Brinbaum* references and submit that they also fail to disclose such a proposition. *Brinbaum* ¶ 5 states:

[0005] **Furthermore, such survey-based advertising testing methods for the purpose of determining effectiveness measures and projecting its impact on sales cannot track actual purchases that were generated directly from the advertisement impressions (i.e., the "exposures" of the advertisement to the viewers).** The reason is that there is no easy and direct way to relate the advertisement exposure to the act of purchase. This is particularly difficult and critical for TV commercials.

(Emphasis added).

As quoted above, *Brinbaum* concerns tracking the efficacy of **survey-based advertising** and whether such advertising has an impact on sales. Accordingly, Applicants submit that this is different than using “advertising data to forecast demand,” as the cited portion of the reference fails to discuss demand forecasting. Rather, it discusses **actual purchases**. In addition, the reference concerns **survey-based advertising**, whereas the present claim 1 involves **browsing activity**. In addition, Applicants have reviewed the *Kuono* reference and submit that it concerns forecast sales numbers for commodities, and **not** using “advertising data to forecast **demand**.” See *Kuono*, Abstract.

Applicants further submit that the concept of using “advertising data to forecast demand” asserted in the Office Action is not relevant to the above element of claim 1 that includes “**using a generated projection of future browsing activity to predict future purchasing activity**.” Claim 1, as amended, does not involve using “advertising data to forecast demand.” In contrast, claim 1 involves projected **browsing activity** generated from a browsing history in order to predict future **purchasing activity**. The claim does **not** incorporate the use of advertising data as alleged by the Office Action. Instead, claim 1 projects purchasing activity from a browsing projection, which is generated from a browsing history. Furthermore, Applicants assert that it is not clear exactly how advertising data can be used to predict future purchasing activity.

Accordingly, Applicants submit that the above cited combination of references fails to disclose, teach, or suggest each element of claim 1. Applicants again note that the Office Action acknowledges this deficiency of the cited art in item 11 therein. Furthermore, the *Kuono* and *Brinbaum* references fail to remedy these acknowledged deficiencies as they do not show or suggest the subject matter of claim 1 as described above. Therefore, Applicants respectfully request that the rejection of claim 1 as amended be withdrawn. Additionally, Applicants request that the rejection of claims 2-5 be withdrawn as depending from claim 1.

Further, independent claims 6, 7, and 23 include elements similar to those discussed above with respect to claim 1. In particular, claim 6 includes, among other elements, generating from compiled historical browsing data **a projection of future**

***browsing activity with respect to the selected item, and using the generated projection of future browsing activity to generate*** a first projection of future purchasing activity levels with respect to a selected item.

Claim 7 includes transforming the retrieved data into a projection of future purchasing activity at the merchant for the selected item, ***the transforming including using the retrieved data to generate a projection of future browsing activity with respect to the selected item, and using the generated projection of future browsing activity to predict future purchasing activity for the selected item.***

Similarly, claim 23 includes ***generating from the retrieved data a projection of future browsing activity with respect to the selected item, and using the generated projection of future browsing activity to generate a projection of future purchasing activity levels with respect to the selected item.***

As discussed above, the cited art fails to teach or suggest at least these elements because, as noted above in reference to claim 1, claims 6, 7, and 23 recite the use of ***projected browsing activity*** generated from browsing history data in order to predict future ***purchasing activity***. The cited combination of references fails to show or suggest at least this element for the reasons described above. Accordingly, Applicants request that the rejection of claims 6, 7, and 23 be withdrawn. Also, Applicants request that the rejection of claims 8, 9-22, and 24-25 be withdrawn as depending from claims 6, 7, and 23, respectively.

In addition, claims 37 and 38 have been added to claim further embodiments set forth in the present application. Favorable action with respect to new claims 37 and 38 is requested.

#### **IV. Double Patenting Rejection**

Next, in item 12 of the Office Action, claims 1, 7, 9-13, and 21-25 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-12 of co-pending Application No. 10/830,860. Without conceding the merits of this rejection, Applicants respectfully postpone response to this rejection until examination closes in the present application, co-pending Application No. 10/830,860, or both.

**CONCLUSION**

It is requested that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding this Response, the Examiner is encouraged to telephone the undersigned counsel of Applicants.

Respectfully submitted,

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